

1 SCOTT JOHNSON,

2 Plaintiff,

3 v.

4 MILHOUSE PROPERTIES LLC,

5 Defendant.

6 Case No. 21-cv-06742-JST

7 **ORDER TO SHOW CAUSE**

8 On August 31, 2021, Plaintiff Scott Johnson filed this action against Defendant Milhouse
9 Properties LLC, alleging violations of the Americans with Disabilities Act (“ADA”) and
10 California’s Unruh Civil Rights Act (“Unruh Act”) in relation to a bar called Alex’s 49er Inn in
11 San Jose, California. ECF No. 1. Plaintiff seeks injunctive relief under the ADA and the Unruh
12 Act, statutory damages under the Unruh Act, and attorney’s fees and costs. *Id.* at 7. Plaintiff
13 contends that this Court has federal question jurisdiction over the ADA claim and supplemental
14 jurisdiction over the Unruh Act and other state law claims. *Id.* ¶¶ 5-6.

15 Supplemental jurisdiction “is a doctrine of discretion, not of plaintiff’s right.” *United Mine*
16 *Workers v. Gibbs*, 383 U.S. 715, 726 (1966). District courts have discretion to decline to exercise
17 supplemental jurisdiction if: “(1) the claim raises a novel or complex issue of State law, (2) the
18 claim substantially predominates over the claim or claims over which the district court has original
19 jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or
20 (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.”
21 28 U.S.C. § 1337(c).

22 Numerous federal district courts across California have declined to exercise supplemental
23 jurisdiction over Unruh Act claims brought alongside ADA claims, citing 28 U.S.C. §§ 1337(c)(2)

United States District Court
Northern District of California

& (c)(4). *See, e.g., Estrada v. Fiesta III, LLC*, 2020 WL 883477, at *5 (C.D. Cal. Jan. 9, 2020) (declining to exercise supplemental jurisdiction over the plaintiff's Unruh Act claim because "exceptional circumstances" and "compelling reasons" existed, and stating that the plaintiff may "pursue his Unruh Act claim in state court – the appropriate forum for such claim under these circumstances"); *Langer v. Mobeeus, Inc.*, 2020 WL 641771, at *5 (C.D. Cal. Jan. 2, 2020) (similar); *Langer v. Deddeh*, 2019 WL 4918084, at *2 (S.D. Cal. Oct. 4, 2019) (declining to exercise supplemental jurisdiction because the Unruh Act claim predominated over the ADA claim and the interests of comity and discouraging forum shopping constituted exceptional circumstances); *Theroux v. Oceanside Motel-9, LP*, 2019 WL 4599934, at *2 (S.D. Cal. Sept. 20, 2019) (similar); *Langer v. Petras*, 2019 WL 3459107, at *2 (S.D. Cal. July 31, 2019) (similar); *Spikes v. All Pro Auto Repair, Inc.*, 2019 WL 4039664, at *2 (S.D. Cal. Aug. 26, 2019) (dismissing for these reasons various state law claims including claims for violation of the Unruh Act, California Health and Safety Code Section 19955, negligence per se, and negligence); *Rutherford v. Ara Lebanese Grill*, 2019 WL 1057919, at *5 (S.D. Cal. Mar. 6, 2019) (finding that "it would be improper to allow Plaintiff to use the federal court system as a loophole to evade California's pleading requirements").

This Court recently declined jurisdiction over a plaintiff's Unruh Act claims in circumstances like those presented here. *Arroyo v. Quach, Inc.*, Case No. 21-cv-08778-JST, ECF No. 21 (N.D. Cal. Apr. 12, 2022). The Court noted that California federal courts have recently experienced a large influx of cases involving a federal claim under the ADA for failure to ensure that businesses are accessible to customers with disabilities, accompanied by a state-law claim under the Unruh Act, which provides statutory damages for the same conduct. The Court noted that the Ninth Circuit had tied this increase in filings largely to California's recent decision to impose "additional procedural requirements on construction-related accessibility claims" in order to "balance its objectives of allowing monetary relief, avoiding undue burdens on businesses, and realigning undesirable incentives for plaintiffs." *Arroyo v. Rosas*, 19 F.4th 1202, 1207, 1213 (9th Cir. 2021) (internal quotation marks omitted). The Court continued:

The comparative ease of filing these cases in federal courts "has

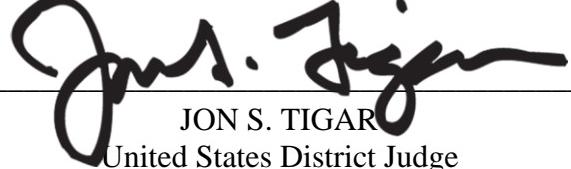
1 created an end-run around California's requirements," because
2 heightened procedural requirements generally do not extend to cases
3 filed in federal courts. *Id.* at 1213 (cleaned up); *see also Castillo-*
4 Antonio v. Hernandez, No. 19-cv-00672-JCS, 2019 WL 2716289
5 (N.D. Cal. June 28, 2019) ("As district courts within the Ninth
6 Circuit have repeatedly held, state pleading requirements for
7 disability discrimination claims do not apply in federal court
8 because such requirements are procedural in nature and federal
9 courts use federal procedural rules."). This shift "threatens to
10 substantially thwart California's carefully crafted reforms in this
11 area and to deprive the state courts of their critical role in
12 effectuating the policies underlying those reforms." *Arroyo*, 19
13 F.4th at 1213.

14 As the Ninth Circuit recognized, this situation presents "extraordinary circumstances" within the
15 meaning of § 1367(c)(4). *Id.* at 1214. The Court in *Quach* found the same "extraordinary
16 circumstances," and then determined, after considering economy, convenience, fairness, and
17 comity, that there were compelling reasons to decline supplemental jurisdiction.

18 This case presents the same considerations that were present in *Quach* and numerous
19 similar cases in other California federal courts. Accordingly, the Court now ORDERS Plaintiff to
20 show cause as to why the Court should not decline to exercise supplemental jurisdiction over the
21 Unruh Act claim in the complaint in this case. Plaintiff shall file a response to this order to show
22 cause within 21 days of this order. In the response, Plaintiff shall identify the amount of statutory
23 damages sought in this action. Plaintiff and Plaintiff's counsel shall also include declarations in
24 their responses which provide all facts necessary for the Court to determine if they satisfy the
25 definition of a "high-frequency litigant" under California Civil Procedure Code §§ 425.55(b)(1) &
26 (2). Failure to file a written response will result in dismissal of the complaint.

27 **IT IS SO ORDERED.**

28 Dated: April 25, 2022



JON S. TIGAR
United States District Judge